

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

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5 In the Matter of:

6

7 DOWLING COLLEGE, Case No. 16-75545-reg

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 Alfonse M. D'Amato Federal Courthouse

14 290 Federal Plaza

15 Central Islip, New York 11722

16

17 August 21, 2019

18 1:47 p.m.

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21 B E F O R E :

22 HON ROBERT E. GROSSMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: Unidentified

[724] Motion to Object/Reclassify/Reduce/Expunge Claim
Numbers #131 of Airwald, #132 of Airweld, #443 of Angie L
Martinez, #130 of Courtney Whalley, #15 of East Islip Lumber
Co Inc, #3 of Justin Robert Carlson, #72 of Mike Covello,
#482 of United States Department of Education, #783 of
United States Department of Education , #802 of Vladislav
Tsalko, #186 of Ann Saggese Garnes, 133 of Ashvin Doshi,
#226 of Carole Saturnino, #188 of David C Maserjian, #448 of
David Gold & Bertha Gold JT Penn, #171 of Dennis H Hawkins,
#208 of Siana Sclafini, #105 of George Roberta, #210 of
George Roberta, #282 of Gerald R & Beverly G Sullivan, #352
of Harold A Koster & Joan M Koster, #206 of Irwin M
Weinstock, #241 of John Grande , #409 of Joseph M Kazckowski
Trustee, #205 of Kenneth A Dooppelt; # 150 of Laurie
Hoffman, #317 of Lewis T Boxwell, #177 of Marie Turro
Gillespie, 249 of Melanie Dobel, #242 of Miroslav Satan, #229
of Nicholas Peppino, #316 of Peggy B Reed, #283 of Steven J
Dobel, #122 of US Trust Company of Delaware Co-Trustee
Danyal Ozizmir Irrevocable Trust, #123 of US Trust Co of
Delaware Co-Trustee Danyal Ozizmir Irrevocable Trust, #240
of Waldemar Lipinski & #222 of William A Apfel by Anthony C
Acampora on behalf of Ronald J. Friedman, Esq., Unsecured
Creditor Trustee.

[726] Motion to Object/Reclassify/Reduce/Expunge Claim

Numbers 194-Allan B Mendelsohn, #408-Barnes & Noble College, #187-Block Chiropractic Sports & Willness, #9-Bonnie Nohs for Michelle T Nohs, #290-Bri-Tech, Inc, #75-CIT Finance LLC, #53-Deanna Ocampo for Michelle T Nohs, #179-Delta Mu Delta, #252-Doherty, Enterprises, Inc, #405-Elinor Brunswick Appel, #447-Elsevier BV, #358-Expense Reduction Analysts Addison Tower, #203-Gayle M Balmuth, #451-Geeta Persad, #169-Grammy Enterprises LLC, #455-Hartford Fire Insurance Co Hartford Plaza, #276-Hobsons Inc, #142-Joseph Economico, #125-Laser Performance Products, Inc, #383-Local 153 Pension Plan, #425-Maryann Caputo, #85-Mike Caldarella, #293-National Union Fire Insurance Company, #168-Platinum Energy LLC, #27-Robert Elkins, #165-Robert Moccia, #393-Royal Star Associates, Inc, #39-Skyrush Marketing, #288-Smart Power Inc, #318-Steven Murray, #391-The Hartford, #784-United States Department of Education & #780-Westchester Journal News Acct by Anthony C Acampora on behalf of Ronald J. Friedman, Esq., Unsecured Creditor Trustee

[728] Motion to Object/Reclassify/Reduce/Expunge Claim

Numbers: 351, 442, 340, 462, 180, 463, 266, 779, 438, 292,
212, 445, 161, 246, 431, 291, 496, 224, 272, 217, 201, 454,
420, 392, 307, 239, 237, 158, 444, 439, 403, 479, 143, 257,
435, 471, 119, 476, 114, 199, 251, 424, 453, 416, 350, 386,
401, 412, 197, 126, 216, 478, 782, 459, 461, 163, 489, 379,
243, 490, 275, 385, 378, 207, 195, 475, 474, 486, 400, 308,
433, 464, 374, 166, 170, 215, 422, 284, 202, 432, 342, 499,
366, 193, 460, 801, 493, 339, 419, 200, 137, 410, 427, 141,
223, 389, 364, 417, 387, 470, 803, 81, 359, 376 & 149 by
Anthony C Acampora on behalf of Ronald J. Friedman, Esq.,
Unsecured Creditor Trustee.

Transcribed by: Sherri L. Breach

1 A P P E A R A N C E S :

2 SILVERMANACAMPORA, LLP

3 Attorneys for Dowling College Unsecured Creditor Trust

4 100 Jericho Quadrangle, Suite 300

5 Jericho, New York 11753

6

7 BY: BRIAN POWERS, ESQ.

8 ANTHONY ACAMPORA, ESQ.

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1 P R O C E E D I N G S

2 THE CLERK: Matters Number 39 through 41, Dowling
3 College.

4 (Pause)

5 MR. ACAMPORA: Good afternoon, Your Honor.
6 Anthony Acampora, SilvermanAcampora for Ronald Friedman, the
7 unsecured creditor trustee. With me today is Mr. Brian
8 Powers and the trustee, Ronald Friedman.

9 MR. POWERS: Good afternoon, Your Honor.

10 THE COURT: Okay.

11 MR. ACAMPORA: We have three claims motions on.
12 The reason I'm here, Your Honor, is to give you a little
13 quick status as to what's going on with the litigation so
14 that you're aware, and then Mr. Powers will do the claims
15 objections, with your permission.

16 DNO settlement is being finalized. We're
17 gathering the signatures of the 12 defendants. Money is in
18 that pipeline. We will serve the Rule 41 dismissals that we
19 spoke about at the last hearing as soon as we have the money
20 and the case is actually settled, and we'll be serving that
21 on the creditors and filing it on the docket.

22 I've settled with KPMG.

23 We plan to file -- there's no pending litigation
24 as Your Honor is aware. That was through a mediation before
25 we commenced any litigation. We were planning on filing

1 something similar to the Rule 41, but not exactly, another
2 notice of settlement of litigation or settlement of claim,
3 putting that on the docket in the main case because there's
4 no adversary from which to put it.

5 And the only question I have for Your Honor is do
6 you want to see that document in camera along with the
7 settlement agreement in camera as we did with the DNO?

8 THE COURT: Yeah. I mean, you're aware that
9 there's a good bit of public sentiment as emphasized in a
10 newspaper article that was circulated that disagrees with
11 the trustee and apparently your firm's belief that you can
12 do all this without explaining it to anybody, or adequately
13 explaining it. That's the view of alumni of Dowling
14 College.

15 I have made my view very clear in this case. You
16 guys do what you do at your own peril. That's going to be
17 highlighted in about five minutes when we get into the
18 claims objections. But I have nothing to say, not nothing
19 to say. I will have plenty to deal with in this case,
20 plenty.

21 I think what you're doing by not -- if that's your
22 ultimate decision, not explaining what went on in this case,
23 what happened -- and don't tell me the complaint does it.
24 I've heard your whole argument about this. There's an
25 entire constituency of people that were hurt in Dowling

1 College who are unsatisfied, and I agree with them, with the
2 actions of the trustee in this case so far, that the
3 settlement you've entered into which you have agreed not to
4 publicize or give people an opportunity to comment on I
5 think is a horrendous decision. That's a decision you're
6 making. We've been through this. When it's my turn I'll
7 have something to deal with and say about it.

8 I'm not interested in any more discussion on this
9 one. I really am not. I told you what I think you should
10 do. You guys are going about this under the view that you
11 said to me in the last hearing, I'm the only person who
12 believes you have to seek the Court's approval on this. I
13 disagree with that. I'm not sure what you sign is
14 enforceable in any form. Okay. You're free to sign it.
15 you do what you want.

16 I'm not discussing this anymore. I've made my
17 views perfectly clear. I'm going to have my say in this
18 case down the road. You're going to understand it very
19 clearly down the road. But for now you have the belief, as
20 counsel to Mr. Friedman, and Mr. Friedman has a belief that
21 you can proceed in a certain fashion. I disagree with that.
22 You want to go ahead. It's a free country. The Court will
23 have its opportunity to participate at another point.

24 We're done. Move on to the objections. I don't
25 want to hear anymore about your settlements. I really

1 don't. I don't have any interest in your settlement where
2 you don't ask the Court to review it, approve it or do
3 anything else.

4 I don't know what you're doing with the KPMG
5 settlement. What I told you to do or suggested you guys do,
6 and you may still be doing it in which case it will be fine,
7 is let the public know what the settlement is, what you're
8 doing, why you did it, what the monies are involved in it,
9 how it's going to proceed, and let people come in and say
10 they either agree or disagree. You don't agree that they
11 have that right.

12 MR. ACAMPORA: Your Honor doesn't want me to
13 discuss it.

14 THE COURT: No, I don't. I really don't. I
15 really don't. I don't want to hear it anymore.

16 MR. ACAMPORA: I understand.

17 THE COURT: Then don't do it. I just told you I
18 don't want to hear this anymore. We're going to have an
19 opportunity where you will have the right and probably the
20 need to explain this fully. Not today.

21 MR. ACAMPORA: I have no intention of doing it
22 today.

23 THE COURT: Okay. Anything else you want to say,
24 you can -- free to go ahead and say it.

25 MR. ACAMPORA: Yes.

1 THE COURT: Go ahead.

2 MR. ACAMPORA: That is consistent with something
3 you said to me prior months ago. We then, I thought,
4 reached an understanding as to how we would proceed, that
5 the number was -- and I'm not arguing. I'm just -- I'm
6 protecting my record, Your Honor.

7 THE COURT: That's fine.

8 MR. ACAMPORA: And I'm entitled to do that.

9 THE COURT: You are entitled to that.

10 MR. ACAMPORA: We had a conversation about what
11 could and could not be spread upon the record based upon the
12 parameters of the ability to settle with these defendants.
13 We also discussed that we needed to put something on the
14 record that showed what the claims were, what their
15 objections were, that you were concerned about notice.

16 We also discussed that there's no 9019 procedure
17 here, so everything that you just said confuses me a little
18 bit because creditors don't have the right to object under
19 the plan and the confirmation order.

20 THE COURT: That's your view. I know that. That
21 doesn't seem to be the view of a fairly large -- a large
22 constituency.

23 MR. ACAMPORA: So let me address that constituency
24 for one minute and then I will subside and let Mr. Powers
25 proceed.

1 I spoke to Newsday and I've spoke -- and Mr.
2 Friedman spoke to the person that was quoted in Newsday.
3 The Alumni Association of Dowling College was -- Inc., was
4 created two months after Dowling closed its doors. So the
5 tenor of that article was how is the trustee representing
6 that organization. And I think it's clear that we're not.
7 The Dowling Alumni Association was a DBA that was rolled up,
8 as Your Honor is well aware, by the debtor when they filed
9 for bank -- when it filed for bankruptcy.

10 So what I had told Newsday was that's wrong.
11 We're not representing the Dowling Alumni Association or the
12 -- I'm sorry -- the Association -- the Association of Alumni
13 -- the Alumni Association of Dowling, Inc. is the actual
14 name. We're not representing that entity. That individual
15 is known to Mr. Suther (ph). He's spoken to Mr. Friedman.
16 He wants to buy the college. He wants to do something else.
17 The college's charter is gone. We've gotten no objection
18 from them.

19 I understand what's in the newspaper. I think
20 it's inflammatory, and I don't think it reflects reality.
21 Your Honor knows I'm not trying to settle claims that that
22 entity may have. I don't believe that entity has any claims
23 because as an entity it didn't exist until the debtor was
24 done.

25 THE COURT: Well, your view on claims, which is

1 going to be the next round of this series today, and my view
2 on claims vary dramatically. So why don't you wait till Mr.
3 Powers is done and hear my view on that, and you may
4 understand why I'm concerned, to put it mildly, about what's
5 going on.

6 We have numbers of people who have sang the same
7 tune. Dowling took money from them. You said to this Court
8 on at least two occasions that Dowling paid no bills during
9 the two-year period, whatever it was, which I don't find
10 possible, but that was your statement. If Dowling paid
11 nothing out and Dowling collected money, money went
12 someplace, either -- I don't assume a bunch of people took
13 it in suitcases. I don't assume you guys have a clue where
14 it went. I really don't.

15 Don't answer me, because everything I've seen in
16 this case from the Section 5 claims on is that the trustee
17 and his professionals, other than drafting a complaint which
18 explain that millions of dollars couldn't be found, forget
19 the dollars that may have been used for one purpose. You
20 have any number of allegations that we couldn't -- that the
21 accountants told you in a certain year a million and a half
22 dollars couldn't be found. This couldn't be found. It's in
23 the --

24 MR. ACAMPORA: That's not accurate.

25 THE COURT: It's --

1 MR. ACAMPORA: No, Your Honor.

2 THE COURT: -- in the complaint.

3 MR. ACAMPORA: That's not accurate.

4 THE COURT: You want me to give you a copy of it?

5 I read it.

6 MR. ACAMPORA: I drafted it.

7 THE COURT: Well, I understand what you drafted.

8 I read it. There are sections in that complaint where it
9 says in a particular year a million and a half dollars we
10 don't know what happened to it. You don't argue that it
11 went here or there. You just say they can't tell you where
12 it went.

13 MR. ACAMPORA: That's --

14 THE COURT: And in each year there were several
15 years where that statement was made.

16 MR. ACAMPORA: I know what sections you're
17 referring to.

18 THE COURT: Okay.

19 MR. ACAMPORA: Those --

20 THE COURT: I'm not having a discussion.

21 MR. ACAMPORA: Please.

22 THE COURT: Mr. Acampora, please.

23 MR. ACAMPORA: Your Honor, we have these one-sided
24 conversations.

25 THE COURT: Yes, they are.

1 MR. ACAMPORA: And I agree that you're entitled to
2 do that. But I'm entitled to protect my record.

3 THE COURT: Well, when I'm done you can protect
4 your record.

5 MR. ACAMPORA: Fine.

6 THE COURT: I repeat that a normal source of money
7 for any Chapter 11 I've ever seen in 45 years is claims
8 under Section 5, monies that paid out that shouldn't have
9 been paid out, some form of claims. When I asked about it
10 in this case I was told we couldn't do that because we don't
11 think any money was paid and, by the way, we didn't look at
12 the books and records. We never hired an accountant. The
13 trustee has never hired an accountant in this case, to my
14 knowledge, on behalf of you -- on behalf of the estate.

15 You're now settling with KPMG. I don't know what
16 you're settling because I've never seen a complaint. I
17 don't know what KPMG's responsibility was. I don't know
18 what it's for. I don't -- I don't know any of this. I
19 don't -- and nobody else will either.

20 And what I'm telling you is one way or another, it
21 could be really painful, but one way or another the story of
22 what happened at Dowling is not going to get swept under the
23 rug. And I don't care how I get there. I don't care
24 whether it's in this court or another court. This is going
25 to be explained, what everybody's role was from the

1 creditors' committee to the creditors' committee's counsel
2 to the trustee to the trustee's counsel. I've made this
3 abundantly clear time after time after time.

4 When you say we reach an agreement -- I don't have
5 to reach an agreement with you. I have no agreements with
6 you. You do as a lawyer what you think is right. My job is
7 to review that and determine if I agree with it or not. And
8 if I have a legal basis to disagree, then I'm going to do
9 something.

10 So keep going. Keep doing what you're doing.
11 I've made my record incredibly clear in this case,
12 incredibly clear. You have made your record clear. You
13 believe you had no obligation or the trustee has no
14 obligation. And you've -- to do certain things. You
15 believe I don't have the authority to review your
16 settlements. I think you're wrong. Go settle the case and
17 when somebody else comes in and challenges it, maybe there
18 will be a hearing on it. Maybe nobody will ever challenge
19 it.

20 But just understand we have no agreements. We
21 have no understanding. My view of how you all have handled
22 this is marginally better than when you did nothing. And
23 that will be reviewed at a certain point in time, not today.
24 Today is just for what we're doing, which is your claims
25 objections motion.

1 Now I would like to move onto that.

2 MR. ACAMPORA: Very well.

3 THE COURT: Thank you.

4 MR. POWERS: Your Honor, for the record Brian
5 Powers, SilvermanAcampora, counsel to the creditor trustee.

6 I think it makes sense probably to take the
7 omnibus objections in numerical order. So the first omnibus
8 objection, Your Honor, was to duplicative, amended and
9 superseded claims. That was filed on July 12th and it's ECF
10 724. The affidavit of service of that is at ECF 724-5. It
11 was also filed in cert on the same day on all of the
12 claimants and the United States Trustee.

13 The claims on this, as I stated, Your Honor, were
14 claims that were duplicative --

15 THE COURT: You had one objection in that and your
16 response to that is that that party is taken care of as part
17 of the bondholders.

18 MR. POWERS: That is correct, Your Honor.

19 THE COURT: All right. That makes sense to me.
20 And all the rest there's no objections from anybody?

21 MR. POWERS: No objections to anybody else.

22 THE COURT: And these are all these duplicative --
23 I guess they're being taken care of through your resolution
24 of the bond --

25 MR. POWERS: The bond -- so it's two buckets, Your

1 Honor. There's the bondholder claims which you're correct.
2 They're being taken care of otherwise.

3 There's also claims, I believe, that the
4 Department of Education and a few others that just flat out
5 they were --

6 THE COURT: All right.

7 MR. POWERS: -- superseded by later filings.

8 THE COURT: But nobody's objected to it, so --

9 MR. POWERS: Correct.

10 THE COURT: -- the Court will grant that motion.

11 MR. POWERS: Thank you, Your Honor.

12 Going to the second omnibus objection, Your Honor,
13 this one was filed on July 15th. It's ECF 726. The
14 affidavit of service is ECF 727. It was filed in cert,
15 again, on July 15th on all claimants and the United States
16 Trustee.

17 This one is claims that, based on the debtor's
18 books and records, should either be reduced or disallowed.
19 There are a few --

20 THE COURT: Let me just make one statement
21 quickly. One of the parties that filed a response to this
22 is a Bonnie Nohs.

23 MR. POWERS: Correct.

24 THE COURT: Bonnie Nohs is an employee of the
25 District Court in this building. I have no reason to recuse

1 myself. I've never spoken to her about this. Her -- the
2 judge that she works for has nothing to do with this case.
3 That judge is aware that Bonnie had -- that Ms. Nohs had
4 filed this objection. And so I -- it has no impact on my
5 decisions, but I thought it was fair to let you know.

6 MR. POWERS: I appreciate that, Your Honor. I
7 agree with you. I don't think it has anything --

8 THE COURT: Okay.

9 MR. POWERS: Just for the record we did file two
10 notices of withdrawals of claims objections. These
11 claimants contacted us, provided us with additional
12 information. We were able to reconcile the books and
13 records. We withdrew those. That's Claim Number 169 and
14 Claim Number 408.

15 We also were contacted by Mr. Alan Mendelson. He
16 filed Claim Number 194. This is a bit of a strange
17 situation. He is the trustee of multiple debtors that are
18 substantively consolidated estates. We scheduled one of the
19 debtors. He filed a claim for a different debtor. We
20 objected based on the --

21 THE COURT: In his role as the trustee, Chapter 7
22 trustee?

23 MR. POWERS: As trustee, yes. I believe in the
24 Eastern District.

25 Regardless, we ultimately came to a resolution.

1 The numbers are very close between the --

2 THE COURT: All right.

3 MR. POWERS: -- schedule and the filed claims, so
4 he agreed. And as long as Your Honor is okay with it, he
5 circulated a stip and order that we would ask Your Honor to
6 enter separate and apart --

7 THE COURT: All right.

8 MR. POWERS: -- from this, where essentially
9 they're withdrawing their claim and we're agreeing to pay
10 their scheduled claim which we were going to be paying
11 anyway.

12 THE COURT: Okay.

13 MR. POWERS: That's, again, Claim Number 194.

14 There's also Claim Number 383 which was filed by
15 Local 153 Pension Plan. That claim, Your Honor, they
16 contacted us as well. They gave us a substantial amount of
17 documentation. They --essentially, they had filed a claim
18 that said this is a good faith estimate, and we objected
19 saying, what does that mean, essentially. And they gave us
20 a substantial amount of documentation.

21 Your Honor, we're going to be withdrawing the
22 objection to that claim.

23 THE COURT: All right.

24 MR. POWERS: And then finally Claim Number 784 was
25 the United States Department of Education. They had

1 contacted us, Your Honor, and requested an extension. The
2 United States Attorney on that matter isn't here, isn't
3 available today. He's on vacation. But we're hopeful that
4 we're going to be able to get that one resolved in the short
5 term anyway.

6 But to the extent we don't, we would ask for a
7 holding date sometime maybe early September just for an
8 adjourn date on this.

9 THE COURT: Okay. So the claim that's left is
10 Claim Number 53 here, Ms. Nohs' objection?

11 MR. POWERS: That's the objection, yes.

12 THE COURT: Right.

13 MR. POWERS: I think it's -- it's actually two
14 claims, Your Honor. So Ms. Nohs' claim is Claim Number 9
15 and then she filed with another -- I believe her name is
16 Deanna Ocampo, that was Claim Number 53 for \$500. They both
17 filed it.

18 THE COURT: Right. It's 19 -- 14,5 and 500, I
19 guess.

20 MR. POWERS: I think it's 15,000 even.

21 THE COURT: Okay.

22 MR. POWERS: So --

23 THE COURT: And what's your -- they objected by
24 saying they endowed a scholarship for specific purposes at
25 Dowling.

1 MR. POWERS: That is correct, Your Honor.

2 THE COURT: Ms. Nohs is in the courtroom if she
3 wants to come up. You don't have to if you wish to --

4 MS. NOHS: I can't hear him, so I'm a little
5 (indiscernible).

6 THE COURT: Okay. Why don't you have a seat over
7 here?

8 MR. POWERS: So essentially, Your Honor, the basis
9 of our objection -- and this has been before the Court in
10 numerous different settings -- is that under New York State
11 law the cy pres doctrine is the only way to distribute
12 endowed monies.

13 THE COURT: That's not true. That's not true. As
14 a matter of law that's not true.

15 MR. POWERS: I -- Mr. Bevona (ph) is in the
16 courtroom today, Your Honor. He's had --

17 THE COURT: I don't care who is here. I've dealt
18 with this in several cases. As a black letter law, that's
19 not true. That's not how New York law works.

20 What happens is if you have a charitable donation,
21 often times those donations end up in places where the party
22 that made the donation passes away, dead. And the
23 institution then either goes out of business or decides to
24 use the money differently. That then doesn't go back to the
25 estate because the person who put up the money is no longer

1 with us. And the ultimate resolution of how that money is
2 distributed would be under a Cy pres concept.

3 But exclusive of that, parties are free to come to
4 a court and reach agreements of to the change of how money
5 is used because if the party is still alive who gave you the
6 money, as Ms. Nohs obviously is, her objection is, I gave
7 the money to Dowling specifically to endow a scholarship in
8 the name of X, not to endow that scholarship at St. Mary's.
9 I think that's basically what she's arguing. That was her
10 specific purpose. She's still with us and she can evidence
11 to me that was her purpose.

12 The fact -- now your argument is we shouldn't give
13 it back to her even if the, what, court orders it?

14 MR. POWERS: So --

15 THE COURT: So if you and she agree that you would
16 give her back the money, I could order you giving her back
17 the money.

18 MR. POWERS: Your Honor --

19 THE COURT: There are tax consequences to her, but
20 that's not my issue.

21 MR. POWERS: If I may, Your Honor, just quickly.
22 I think we're conflating issues here.

23 So the money for all of the scholarships is
24 sitting with the plan administrator, all of the endowed
25 funds waiting to be distributed, to the extent they haven't

1 been. I know they've been working to do it.

2 THE COURT: All right. And it's supposed to be --

3 MR. POWERS: That's --

4 THE COURT: -- way.

5 MR. POWERS: That is separate and apart --

6 THE COURT: It's not --

7 MR. POWERS: -- from the trust.

8 THE COURT: It does not get paid to creditors.

9 MR. POWERS: Right.

10 THE COURT: Those funds are not available to the
11 general creditors.

12 MR. POWERS: Right.

13 THE COURT: And that's clear under New York law.

14 MR. POWERS: But the claims in the case have now
15 -- so the general unsecured claims are now at the trust
16 level, whereas we're talking about two pools of money.
17 We're talking about the scholarship money is sitting with
18 the plan administrator waiting to be distributed, whereas
19 the money that comes in from whatever settlements we have --

20 THE COURT: Who should she ask for the money?

21 MR. POWERS: The plan administrator, ultimately.

22 And if --

23 THE COURT: So if the plan --

24 MR. POWERS: And, again, Mr. Bevona is in the
25 courtroom.

1 THE COURT: If the plan administrator agrees to
2 give her the money, then she doesn't have a claim here.
3 Somebody should have explained that --

4 MR. POWERS: I totally agree, Your Honor.

5 THE COURT: -- to her.

6 MS. NOHS: Well, that's not what --

7 THE COURT: Hold it. Hold it. Hold it. Just
8 let's not have a --

9 MS. NOHS: Okay.

10 MR. POWERS: More than happy to have that
11 conversation, Your Honor.

12 THE COURT: Okay.

13 MR. POWERS: But, ultimately, the -- there's no
14 claim against the trust because, again, there are --

15 THE COURT: That may be right. You may have no
16 claim -- what they're saying is that these monies are not
17 property of the -- well, I want to be careful. It may or
18 may not be property of the estate, but it can't be used to
19 pay creditors.

20 So they can't give you the money as a creditor,
21 but you can be -- you can ask the plan administrator,
22 because that's different from these guys, to have me issue
23 an order if he wants directing that \$15,000 or 15,5, if
24 they're both the same, of the funds he has instead of going
25 to Mount St. Mary's return to you. They should be -- they

1 shouldn't care. If you weren't alive, then that's a
2 different issue because interpreting your will, small "W"
3 not your will, it creates more of a problem.

4 Here -- and I think these guys can help you if
5 they think you're right. We're not doing this because I
6 know you or you're in this courtroom. This -- I would do
7 this for anybody. If the party comes in and says, I endowed
8 something at a specific institution and I want my money
9 back, there's a mechanism -- there are tax consequences, but
10 that's not their tax consequences. They're your
11 consequences.

12 If the money was gone, then you could in theory
13 say I have a claim here and then their argument was probably
14 correct. You're not a creditor of the estate because
15 they're perfectly willing to give you the money. Not
16 perfect -- they don't hold your money. They don't owe you
17 the money. The plan administrator owes you the money. So
18 whomever that is --

19 MR. POWERS: It's Mr. Rosenfeld.

20 THE COURT: Okay.

21 MR. POWERS: Again --

22 THE COURT: These guys will facilitate for you,
23 Mr. Powers will facilitate a relation -- a connection.

24 Again, I am not making a determination --

25 MR. POWERS: Mr. Bevona is from our --

1 THE COURT: Okay. I'm not making -- Mr. Bevona,
2 I'm not making a determination that he has to give you the
3 money if he thinks it's wrong. Make sure you're careful
4 about that. I'm not directing you to give her the money.
5 I'm directing you to have a conversation and if, as a matter
6 of law, you believe you can do it, do it. If you can't,
7 then we'll have to revisit this in a different forum.

8 MR. POWERS: Your Honor, I've just been informed,
9 Mr. Bevona will give Ms. Nohs her card and -- his card and
10 get into a dialogue --

11 THE COURT: Okay.

12 MR. POWERS: -- and figure out how to work it out.

13 THE COURT: Again, I'm not -- all we're
14 determining is that your objection to the claim probably is
15 moot because you don't get the money from the general pool
16 of creditors because the money that you put up is not in
17 that pool, and those funds all have to -- and they are
18 segregated. So there's \$15,000 plus whatever is there. I
19 don't know what's there. 99 percent of those funds are
20 going to go through a cy pres because there's nobody around
21 to fight about it.

22 But in this particular case he'll have to make a
23 decision as to how he believes the estate should operate,
24 and then you're free to come back here with the estate
25 issue, not the creditor issue. This isn't their issue.

1 MS. NOHS: Okay.

2 THE COURT: Okay.

3 MS. NOHS: Yeah.

4 THE COURT: So hopefully it will work out one way
5 or another. But I don't think you have a claim -- I don't
6 make a ruling on that. Let's see what happens over there
7 and I'll adjourn the decision on this particular claim. But
8 if it's resolved in any fashion to the satisfaction of the
9 parties, then all you would do is either withdraw the claim
10 or stipulate to the objection that they've raised.

11 MS. NOHS: Okay.

12 THE COURT: All right.

13 MS. NOHS: Thank you.

14 THE COURT: Okay. So that's that set, right?

15 MR. POWERS: I think that that's the end of the
16 second omnibus set.

17 THE COURT: Okay.

18 MR. POWERS: I think there are a few other --

19 THE COURT: No. We go the third one going.

20 MR. POWERS: Well, obviously, but I think there's
21 a few other claims on the second omnibus --

22 THE COURT: I only have Ms. Nohs. That's the only
23 one I had on this --

24 MR. POWERS: No. No. That's objections and
25 whatnot.

1 THE COURT: Right.

2 MR. POWERS: I'm just talking about claims to be
3 either disallowed or reduced.

4 THE COURT: Oh, other than that I'll grant the
5 motion.

6 MR. POWERS: Thank you, Your Honor, just as
7 housekeeping.

8 THE COURT: No. That's true. You're right.
9 You're right.

10 MR. POWERS: All right. So that brings us to the
11 third omnibus objection, Your Honor. This was the student
12 claims. This was filed again on July 15th. It's ECF 728.
13 The affidavit of service is ECF 729, served on that same
14 day, July 15th, on all the claimants and the United States
15 Trustee.

16 THE COURT: Now there are -- you have a whole list
17 of folks, but let's only deal with the ones that actually
18 filed objections.

19 MR. POWERS: Understood, Your Honor.

20 THE COURT: You have a Mr. Ketterer (ph), a Justin
21 Deluca (ph), a Peter Esposito (ph). I think that may be it.

22 MR. POWERS: There's four.

23 THE COURT: And a Timothy Going (ph).

24 MR. POWERS: Correct.

25 THE COURT: So there are four of all the ones that

1 you served that have replied to your objection to claims.

2 MR. POWERS: Correct, Your Honor.

3 THE COURT: Okay. So let's deal with in any
4 order. I think it's Mr. Ketterer is first. But I think
5 your response was a singular response to all of them.

6 MR. POWERS: It was, Your Honor. We didn't go --
7 I mean, ultimately, we feel that these are -- as much as the
8 facts are different in each individual case based on certain
9 circumstances, whether it's they have scholarship, whether
10 it's they stood online waiting for their transcripts,
11 whether they claim that there was little help between
12 Dowling, their future educational institution, the State and
13 whatnot, they're all kind of similarly situated in that
14 Dowling closed and they had to scramble to get another
15 educational institution.

16 And I think -- and of course Your Honor feels this
17 way as well from all of his statements, everybody feels
18 badly for the students. The question, and it's our
19 position, they don't have a legally cognizable claim against
20 the Dowling estate for what happened.

21 And even to the extent they did, they don't --
22 there's no connection between the damages that they're
23 alleging and what happened to them.

24 THE COURT: So your position is they have no
25 damages or they have no claims?

1 MR. POWERS: It's both. They don't have a claim
2 in the first place, but even if they did --

3 THE COURT: Why don't they have a claim?

4 MR. POWERS: Well, I --

5 THE COURT: Your response generally says Dowling
6 as an institution, after it shut its doors, entered into a
7 series of agreements with both New York State and other
8 schools to provide students who were now sort of left out in
9 the cold the ability to finish their degree programs at
10 another institution, or in other matters to eliminate
11 certain amount of their debt, if they wanted to give up
12 certain credits, all of which has to do with mitigation of
13 damages, not whether there was an underlying cause of
14 action.

15 MR. POWERS: I understand your position on that,
16 Your Honor.

17 THE COURT: Well, it's not only mine. In the
18 affidavit I think of either Mr. Bevano or somebody that you
19 guys submitted, in a footnote you acknowledged that these
20 parties are making a veiled reference to fraud.

21 And that while they are not complete in their
22 analysis, you represent -- he represented in his affidavit
23 as filed by you guys that there's a recognition on your part
24 that essentially what they're arguing is they were defrauded
25 and, therefore, I agree with that. I know -- I'm not saying

1 they were. I'm saying their allegations require an
2 evidentiary hearing, for all of these guys if they want it,
3 as to whether or not they were defrauded, not whether or not
4 you've mitigated their damages. That's a different issue.

5 You have people who put in pleadings here who
6 said, I paid 1,400 bucks in April and they shut the door in
7 June. They knew they were going to shut the door. They
8 took my money.

9 You had other people who say, I have damages in
10 that when you sent me to another school and I had three
11 credits left, in order to get a degree I had to spend
12 another \$8,000 and take 12 credits.

13 You have another person -- and these stories are
14 replete. They're all over this case, whether they filed
15 these objections or not.

16 The fundamental issue, which is what I was getting
17 at with Mr. Acampora before, is that while there may be an
18 attempt to resolve this case, there may, in fact, be a
19 series of hearings on whether Dowling, operating through
20 whomever it was operating, committed fraud.

21 And if you read the pleadings and you read other
22 cases that have gone down this line, and including in this
23 case, there are people who say, what were the trustees
24 doing, are they responsible; what were the principals of
25 Dowling or the administrators doing. And I caution that any

1 settlement that seems to preclude somebody from arguing that
2 they committed fraud and the trustee was aware of it is not
3 going to work.

4 Now you may think it will work, but if these
5 people come in and argue that these trustees participated in
6 a fraud that caused them damages, you didn't waive that.
7 You don't have the ability to waive that, I don't think.

8 So that individual, who is a creditor in this
9 case, and if you want to look at a history of a similar
10 case, look at Oak Rock. Oak Rock had huge amounts of
11 creditors who the debtor originally viewed had participating
12 interests. I viewed they weren't participating interests.
13 I got reversed and said they were. The reason they still
14 had claims is they said, yes, I had participating interests,
15 but those interests I was defrauded to buy and Oak Rock
16 defrauded me.

17 There's two different things going on here. One,
18 what was the school's responsibility to these students upon
19 shuttering the school. And your argument is they did
20 everything they could. They gave them places to go. They
21 did -- and that may be right. That may be right.

22 They're arguing they were defrauded in the first
23 place; that the school was operating in a fashion that
24 defrauded them when they were told to continue to pay their
25 tuition leading up to the closure of the school. Where did

1 the money go, what happened, which is a question I've had
2 since the beginning. Where did the tuition go? If you
3 weren't paying any bills and students were paying tuition,
4 where did it go? Did it go to the bondholders? Did it go
5 to -- I don't know where it went.

6 So if these parties, and I'm not going to grant
7 your motion to object to their claims. I think they have
8 valid claims at this point, or they've made a prima facie
9 case of a valid claim.

10 Now it may be that they and others don't wish to
11 proceed, in which case that's possible. But I think you
12 have failed to answer the fundamental question in either
13 your response or in anything else that's been done in this
14 case to explain why Dowling didn't commit a fraud.

15 MR. POWERS: I understand Your Honor's position.
16 Just quickly just as a clarification. A very large number
17 of these claims attach absolutely nothing, don't even write
18 a basis --

19 THE COURT: Well, then in an evidentiary hearing
20 you'll take the position that they can't prove it. I don't
21 know what -- you're back to, they failed to show you their
22 transcripts or something. I don't know what it is. If they
23 could establish they paid money, which you agree they were
24 students. They paid tuition. Your difference is you're
25 saying they can't demonstrate why they have damages, which

1 may ultimately be correct. That doesn't deal with the
2 underlying question of whether they were defrauded in the
3 first place. And I've had no satisfactory response from
4 anybody as to whether or not this thing was a fraud.

5 The pleadings seem to suggest it may have been;
6 that they defrauded people into going to an institution that
7 they knew shouldn't exist. Now as a matter of law they may
8 win that. There may not be the elements of fraud. But
9 there's a colorable claim for it, and I believe these claims
10 and anyone else who would have taken the same position, much
11 like we had in other cases, demonstrate a plausible argument
12 for fraud.

13 Now they can choose to proceed. They can choose
14 not to proceed. They're not here. They may have lawyers.
15 They may not have lawyers. I don't know what they have.
16 But you guys in continuing down the path you are should be
17 aware that that issue is out there. And if you think a
18 settlement with the trustees or anyone else where these
19 parties don't have a right to approve or reject the release
20 of whatever claims they may have will be binding on them, I
21 wish you all the luck in the world. I do. But I'll hear
22 that case.

23 MR. ACAMPORA: Can I confer with Mr. Powers for a
24 moment?

25 THE COURT: Sure.

1 (Pause)

2 MR. ACAMPORA: Your Honor, just a point of
3 clarification, I understand where you're going. I
4 understand what you think is the scenario. But I think the
5 one thing -- I have to go check, double check this.

6 THE COURT: All right.

7 MR. ACAMPORA: Dowling closed in July of --

8 MR. POWERS: June.

9 THE COURT: June.

10 MR. ACAMPORA: June of 2016.

11 THE COURT: Right.

12 MR. ACAMPORA: It didn't collect any more tuition.
13 So these students weren't defrauded into giving money like
14 say, you know, one of the wedding places. They weren't
15 defrauded into paying money and then didn't get their
16 credits. They got all of their credits. So I paid \$10,000,
17 got my credit -- and I know Your Honor is smiling at me. I
18 feel bad --

19 THE COURT: You're smarter than this. You're
20 smarter than this.

21 MR. ACAMPORA: No, Judge, because --

22 THE COURT: No. You are smarter than this. You
23 know exactly what I'm saying. Let's not go through this
24 now.

25 MR. ACAMPORA: There -- let me just finish,

1 please.

2 THE COURT: Go ahead.

3 MR. ACAMPORA: They got their credits, and I
4 understand your point. There's this potential fraud here.
5 I do not believe that's the case because part of that is
6 based upon where did the money go. Money came in and money
7 went to operations. And --

8 THE COURT: No.

9 MR. ACAMPORA: -- if you read the complaint --

10 THE COURT: No. No.

11 MR. ACAMPORA: -- they were --

12 THE COURT: Mr. --

13 MR. ACAMPORA: -- they were losing money every
14 year.

15 THE COURT: All right. Bingo.

16 MR. ACAMPORA: Okay. So they had fewer students.
17 They were letting off staff. They were losing money every
18 year.

19 THE COURT: Right.

20 MR. ACAMPORA: Your Honor --

21 THE COURT: None of which --

22 MR. ACAMPORA: -- I spent --

23 THE COURT: -- was told to incoming students when
24 they took their tuition in 2015, 2014, 2016 and a half,
25 quarter.

1 MR. ACAMPORA: But let me finish, please, sir.

2 But if you had credits at that point that were transferrable
3 to another university -- and at the last hearing Your Honor
4 said to me, it's really nobody's fault. It's certainly not
5 mine or the trustee's fault that CW Post wanted them to
6 spend \$8,000 instead of buying three credits. I -- we had
7 no control over that.

8 THE COURT: You didn't.

9 MR. ACAMPORA: Dowling didn't have any --

10 THE COURT: I agree with that.

11 MR. ACAMPORA: I don't think Dowling --

12 THE COURT: You didn't.

13 MR. ACAMPORA: I don't think Dowling had any
14 control over that.

15 The essence, then, of what you're saying is they
16 thought they were going to graduate from Dowling College.

17 THE COURT: No. I --

18 MR. ACAMPORA: That's what they're buying.

19 THE COURT: No. The essence of their argument,
20 not mine, their argument is that had they known that either
21 their scholarships weren't going to exist, the school wasn't
22 going to be able to continue to -- in a manner that they
23 could earn a degree because they were firing teachers and
24 letting off programs, that the school eventually was
25 operating for several years when most reasonable people --

1 their view -- most reasonable people should have shut it
2 down. Leave aside the debts the school incurred. That's
3 not what these guys are arguing about. That's a whole other
4 question, whether that school should have incurred \$54
5 million in debt or not. It's not in front of -- that's a
6 different issue.

7 MR. ACAMPORA: And it happened way before.

8 THE COURT: What these folks are arguing, much
9 like people in normal other civil matters, had you told me
10 X, I wouldn't be in the pickle I'm in and, therefore, I
11 wouldn't have lost the money I lost. The hurdles for that
12 party is, one, did you have an obligation to tell me; did I
13 give you enough information; is that fraud; and the money --
14 and are -- do you have damages. There's a whole panoply of
15 issues that people have to prove to prove fraud.

16 That's not -- I'm not declaring there was a fraud.
17 I'm arguing, much like the affidavit submitted, that these
18 folks are eluding to that.

19 MR. ACAMPORA: Uh-huh.

20 THE COURT: And since I did the exact same thing
21 in another case, it's not just this one, that they have
22 essentially two forms of act -- causes of action here. One
23 is post-2016 you messed me up. Your argument is that may be
24 true, but we're not liable for that. You may be right.

25 Their second argument is, I wouldn't have been in

1 that spot but for Dowling's and the trustees' failure to do
2 A, B, C, D and E, the accountants' failure to do A, B, C, D
3 and E, and there are defenses to all of that. I understand
4 that. But they have raised to me viable claims and those
5 claims -- now will they prosecute them, will -- are they
6 subject to a summary judge -- fraud is rarely subject to
7 summary judgment.

8 But I believe you need an evidentiary hearing to
9 determine what Dowling did and didn't do, and whether what
10 they did leading up to their closure can be viewed as fraud
11 on these students and all the other students who were
12 injured.

13 Your argument is you're uninjured or you weren't
14 injured that much.

15 MR. ACAMPORA: Among other things.

16 THE COURT: Among other things. That's perfectly
17 fine. That's a -- I realize that's the argument, and I'm
18 not ruling on who's right or wrong. But I am unwilling to
19 eliminate their right to recognize this cause of action.
20 And the cause of action is what happened.

21 And this leads into our prior discussion. Unless
22 one can articulate why -- what somebody did and why that
23 wasn't a problem, but explain what they did, then you're
24 left with the type of the article and type of view you have,
25 which is I think these trustees knew it -- not me. This is

1 paraphrasing -- knew what was going on and they had a duty
2 to X.

3 Their view is even if we knew we didn't have a
4 duty, or we did exercise all our duty, we didn't do anything
5 wrong is their argument. They obviously view -- and you
6 guys have gotten together. And I don't argue that that's a
7 resolution either way. You reached an accommodation to
8 avoid a lawsuit. Got it.

9 I think -- and I've made myself clear on it. I
10 don't know what the KMG thing is about at all.

11 MR. ACAMPORA: It's --

12 THE COURT: But that's -- no. No. I know what
13 the possible lawsuit is.

14 MR. ACAMPORA: Yeah.

15 THE COURT: But as you say, there's never been a
16 pleading filed in that case --

17 MR. ACAMPORA: But --

18 THE COURT: -- in that allegation. I think one
19 can take it out of --

20 MR. ACAMPORA: May I --

21 THE COURT: -- the 90 some odd pages, but --

22 MR. ACAMPORA: Yes, Your Honor. So I'm going to,
23 with a very big smile on my face say, you're very smart.
24 You know what my claim would be.

25 THE COURT: Absolutely.

1 MR. ACAMPORA: Okay.

2 THE COURT: And I know their defense. It's the
3 same defense every accounting firm has.

4 MR. ACAMPORA: It's better than that.

5 THE COURT: Yeah. But if the defense is
6 hypothetically, you can't blame me because I told all those
7 guys what was going on, I didn't -- it didn't take ten
8 seconds to understand that once you settled one of these,
9 the other was going to be settled. They had to be settled
10 in tandem.

11 MR. ACAMPORA: They actually settled in the
12 opposite order that --

13 THE COURT: Whatever order it's in --

14 MR. ACAMPORA: -- I thought they would settle.

15 THE COURT: -- they both got to go away at the
16 same time.

17 MR. ACAMPORA: Yes.

18 THE COURT: And all I am trying to do, as
19 uncomfortable as I seem to be making you with this. And I
20 understand that. And I know it's --

21 MR. ACAMPORA: We've known each other a long time.

22 THE COURT: It's just -- I believe that in a -- as
23 opposed to a single asset real estate case or some company
24 in Commack, you have a public institution. That creates
25 certain -- and I had it in (indiscernible) and I have some

1 of the same problems there, too. There is a tension on one
2 side in these cases that said, look, these people are really
3 good people. They're volunteering their time. In fact,
4 Scott Rudolph, and I knew his father pretty well, as you
5 know --

6 MR. ACAMPORA: Put a lot of money in it.

7 THE COURT: -- put a ton of money in it. I knew
8 Arthur. I used to -- I played golf with -- I knew Arthur
9 Rudolph.

10 MR. ACAMPORA: Ten or \$12 million.

11 THE COURT: And their view of this crazy system is
12 one thing over here. No good deed goes unpunished if you
13 want to capitalize that. But there were laws. And the
14 other side of that is tens of thousands or thousands of
15 people who have been injured. We all agree they've been
16 injured. There may not be any culpable -- there may not be
17 any adequate response to their injury, but they've been
18 injured.

19 And not all injuries, as we've learned as lawyers,
20 get satisfied. Justice and fairness are often two different
21 things. But the goal on one side, which is to keep it as
22 quiet as possible and limit the exposure in that, and the
23 goal on the other side which is just explain to me what
24 you're doing, not me, these people.

25 You -- the trustee in this case walks an

1 incredibly difficult line. I understand that.

2 MR. ACAMPORA: Thank you.

3 THE COURT: And I still recognize you're his
4 lawyer. You're not Mr. Friedman. He walks a tough line.
5 But he chose to do it. That's his job. He accepted that
6 responsibility. And you've got to figure out the best
7 mechanism to tell this story, let people vent and move on.
8 They're not going to be happy. I know that. I'm going to
9 get a lot more grief than you will ever get in this case. I
10 know that, too, but that's okay. That's the deal.

11 All I need is for the people to understand why in
12 your -- if you believe this, yes, you were injured, but the
13 law doesn't -- we did the best we can. There is no law. I
14 can't force somebody to do that which is not true in the
15 law. They don't understand that now. All they understand
16 is from that article, and you can say it's one person, it's
17 hundreds that say, you guys are entering into what you
18 always do -- all of us, not just you, the Court, too. I'm
19 right in the middle of it -- a secret transaction to take
20 care of those -- you know, the whole story. I don't think
21 that's what you're doing. I really don't.

22 MR. ACAMPORA: We're not.

23 THE COURT: And I just am trying to communicate
24 unsuccessfully that Mr. Kleinberg's clients chose to be in
25 this position. They chose to be trustees. They can't

1 really now say, no mas.

2 So however, and this is the conversation we did
3 have. Whether it's a 9019 which I agree may be not
4 possible, if you put in -- and I said this last time and
5 I'll say it again -- in the dismissal an adequate
6 disclosure. Let somebody come in and argue. You're going
7 to serve it on them. The case is going to be dismissed.
8 You want to come in and argue it. You can then argue you
9 have no say over that. I don't care what you argue then.

10 But I want them to be able to see that it was a
11 thoughtful process where you are not necessarily -- you're
12 settling. You're not stipulating whatever they did was
13 fine.

14 MR. ACAMPORA: Uh-huh.

15 THE COURT: That's the issue.

16 MR. ACAMPORA: So, Your Honor, we gave you that
17 document in camera. And it might be my misunderstanding as
18 well as Mr. Kleinberg -- I'll speak to -- I'll speak for
19 him. It will be the only time I can because he's not here
20 -- that Your Honor would review that document for that bent
21 on whether it -- you thought it satisfied that. You were
22 going to assist the litigants because we don't have a 9019
23 scenario.

24 THE COURT: I was told that you didn't want me to.

25 MR. ACAMPORA: No. That's not what we said.

1 THE COURT: That's what I was told.

2 MR. ACAMPORA: Your Honor, Judge, Judge --

3 THE COURT: No. No. No. Not you. It filtered
4 back to me.

5 MR. ACAMPORA: By who? It wouldn't come from me.

6 THE COURT: It doesn't matter. It's my own --

7 MR. ACAMPORA: Judge --

8 THE COURT: I run my own show.

9 MR. ACAMPORA: -- we --

10 THE COURT: Internally, not blaming you --

11 MR. ACAMPORA: Okay.

12 THE COURT: -- so let's move on from that.

13 MR. ACAMPORA: We wanted --

14 THE COURT: I have operated on the last several
15 weeks under the impression that nobody wanted my in --

16 MR. ACAMPORA: I want your input.

17 THE COURT: Let me just tell you. I'm not blaming
18 you.

19 MR. ACAMPORA: I don't think you are.

20 THE COURT: Back off.

21 MR. ACAMPORA: I will tell you --

22 THE COURT: I'm not --

23 MR. ACAMPORA: -- I want your input. Mr.
24 Kleinberg, we wanted to avoid --

25 THE COURT: Then what we should do, which I -- in

1 my opinion, is pick a date next week, Monday morning,
2 Monday, you and Mr. Kleinberg and whoever -- Mr. Friedman,
3 and if Mr. Kleinberg wants the head of their trustees to
4 come in, sit down and you can hear what I want and we can
5 have a -- what I think you should do, and we --

6 MR. ACAMPORA: That would be --

7 THE COURT: -- can have a discussion. You don't
8 have -- I'm not dictating unless it's my way it's no way.
9 I'm perfectly willing to create some document that I can
10 say, yes, I'm okay with this. If you -- you guys are
11 welcome to come into court, you or anybody else --

12 MR. ACAMPORA: Uh-huh.

13 THE COURT: -- and argue with me why Mr. Friedman
14 shouldn't settle the lawsuit. He has rights to do certain
15 things, but it gives them a forum to discuss it.

16 MR. ACAMPORA: I --

17 THE COURT: That's all I'm interested in.

18 MR. ACAMPORA: That's all --

19 THE COURT: I'm not trying to make -- I figured
20 out already the numbers in the settlement.

21 MR. ACAMPORA: I know you have.

22 THE COURT: So I understand why those numbers are
23 there. But you have people, then you're going to have
24 people like this other group who have a different agenda.
25 They want this school to be Dowling College again and

1 resurrect it.

2 MR. ACAMPORA: It's not going --

3 THE COURT: That's not his -- Mr. Friedman's
4 issue, my issue or your issue. Go to whoever bought it and
5 convince him. That's not damages. That's a different
6 thing.

7 But if we can get something that's circulated,
8 however you couch it. Mr. Kleinberg will tell his clients
9 that we can reach an accommodation. He's free to put in,
10 and we disagree with everything here. We believe we're the
11 best people on -- I don't care. I just want people to be
12 able to read in their own minds, so when they then say, you
13 did these under a rock, no, I didn't. If you didn't want to
14 come in, you didn't come in. You were free to come in and
15 make an argument. You may prevail. I don't know. Mr.
16 Friedman may agree with you.

17 MR. ACAMPORA: Recognizing some -- a couple of
18 points. That's what I thought we were going to do.

19 THE COURT: Then it's my fault.

20 MR. ACAMPORA: I would love to do that.

21 THE COURT: Then I -- then part of my ire in this
22 case is --

23 MR. ACAMPORA: Well, when we were here --

24 THE COURT: -- I thought I was rejected, not
25 rejected in that sense, rejected for other reasons.

1 MR. ACAMPORA: When we were here the last time Mr.
2 Kleinberg and I were waiting for you to say to us, hey,
3 let's go sit down and here's some of the things we need to
4 do --

5 THE COURT: Okay. My -- fully my fault.

6 MR. ACAMPORA: So that --

7 THE COURT: Now let's start over --

8 MR. ACAMPORA: -- miscommunication was --

9 THE COURT: -- the rest of our lives.

10 MR. ACAMPORA: -- that miscommunication is done.

11 THE COURT: Right.

12 MR. ACAMPORA: And that way I can then take that
13 kind of format and use it for my KPMG which I will then put
14 on the docket because Your Honor did come out and say, I'm
15 concerned. They haven't had notice. Again, we have an
16 issue about --

17 THE COURT: Yeah. I have been waiting to see --

18 MR. ACAMPORA: -- 9019 --

19 THE COURT: -- something for three weeks.

20 MR. ACAMPORA: Well, we sent --

21 THE COURT: And you've been waiting for me to talk
22 to you.

23 MR. ACAMPORA: We sent the Rule 41 and the
24 settlement agreement to your chambers --

25 THE COURT: No, after our last hearing.

1 MR. ACAMPORA: No, before.

2 THE COURT: No. I'm saying after our last hearing

3 --

4 MR. ACAMPORA: Oh.

5 THE COURT: -- you were going to confer with Mr.

6 Kleinberg -- it doesn't matter.

7 MR. ACAMPORA: I think the timeline is a little
8 muddled.

9 THE COURT: It doesn't matter.

10 MR. ACAMPORA: How about we start over?

11 THE COURT: I will take the blame for it.

12 MR. ACAMPORA: We will resend it to you.

13 THE COURT: You don't have to resend. I got what
14 you already sent me.

15 MR. ACAMPORA: We modified it even further --

16 THE COURT: Send me the modified --

17 MR. ACAMPORA: -- based upon your conversation.

18 THE COURT: -- and then I will make time. We can
19 do it next Tuesday -- see if Mr. Kleinberg is available. I
20 know it's his -- and everybody else. I'm not forcing this,
21 next Tuesday at 10. I would like to do it before the Labor
22 Day weekend, so then after Labor Day we can -- between Labor
23 Day and the end we can finish this.

24 MR. ACAMPORA: So then we're going to have an
25 evidentiary -- potentially evidentiary hearings on the

1 student claims. Look, I'm not here to -- I'm not going to
2 stand up here, but I always feel like I stand up here and
3 raise the, yeah, but there's a problem with that. There's
4 no pleading that says fraud. So none of the elements of
5 fraud --

6 THE COURT: Well, you guys acknowledged their
7 claim.

8 MR. ACAMPORA: That's the gist of what they're
9 trying to say. And I would agree with you. They're saying,
10 hey, look, I would have transferred to some other college in
11 2015 had I know that.

12 The flipside of that is, everybody knew Dowling
13 was in trouble. The financials as you see in the complaint
14 show that Dowling is losing money. It's struggling to
15 maintain its student body. That's the buzz.

16 THE COURT: Of the objection -- listen, of the
17 objection -- hold it. Hold it. Of the objections we have,
18 he probably knows better than you, of the objections how
19 many of them relate to students and how many dollars does
20 that relate to?

21 MR. POWERS: It's \$200,000 and there's four
22 students.

23 MR. ACAMPORA: It's the -- are you talking about
24 the total students?

25 MR. POWERS: Like the total --

1 THE COURT: Those are the only four that
2 responded.

3 MR. POWERS: That responded to anything.

4 THE COURT: Five.

5 MR. ACAMPORA: Four.

6 MR. POWERS: There's four and it's \$200,000.

7 THE COURT: Four. And if they get claims, they're
8 going to get a --

9 MR. POWERS: A percentage.

10 THE COURT: -- some percentage of that.

11 MR. POWERS: Correct.

12 THE COURT: You're free to try to resolve it with
13 them.

14 MR. ACAMPORA: And the balance?

15 THE COURT: What?

16 MR. ACAMPORA: And the remaining 100 claims, is
17 the motion granted or --

18 THE COURT: I can't force people to file
19 objections.

20 MR. ACAMPORA: So we're going to have to --

21 THE COURT: I mean, you have rights, too. You
22 gave them a time by which they had to file an objection.
23 They can have the greatest claims in the world, unless they
24 come in. Now they'll have a chance to have a discussion
25 about the settlement, but --

1 MR. ACAMPORA: Potentially.

2 THE COURT: -- they may not even have that chance
3 if they're not creditors anymore. I don't know where that
4 goes. But it's nothing -- I can't --

5 MR. ACAMPORA: So you're granting the motion as to
6 the --

7 THE COURT: -- muse on that.

8 MR. ACAMPORA: You're granting the motion as to
9 the other one hundred that haven't responded, otherwise I
10 have a free for all, Your Honor.

11 THE COURT: They had to submit objections to
12 claims. They had exactly the same information as the
13 parties who did object. Today was the day by which -- or
14 actually it passed. And so, no, I can't extend it on my
15 own. I don't have the power under the code to do that.

16 MR. ACAMPORA: So --

17 THE COURT: So you're saying to me, I assume, that
18 since their time has run, much like any statute of
19 limitations, under the code I must grant the motion relative
20 to these claims.

21 MR. ACAMPORA: I would never tell you you must do
22 anything. We know each other a very long time.

23 THE COURT: In this case it wouldn't be bad.

24 I'll grant that motion.

25 MR. ACAMPORA: Thank you, Your Honor.

1 And now if Your Honor indulges me one more minute,
2 this may fall under the rubric of be careful what you ask
3 for, will I get it.

4 If -- assuming we can get the Department of
5 Education done, assuming we can get the other
6 (indiscernible) student claims done, and I believe I can get
7 KPMG and the Dowling DNO claims done, the only thing left in
8 this matter is Your Honor's fee order for October 16th.

9 THE COURT: Let's do A before we do B.

10 MR. ACAMPORA: Okay. My only -- here's my only
11 comment. I'm not -- we would like to close this case in the
12 third quarter, if possible, so that we can avoid --

13 THE COURT: You want a practical answer or you
14 want a legal answer?

15 MR. ACAMPORA: I'll take both.

16 THE COURT: Well, the legal I don't have because I
17 can't think of it yet.

18 (Laughter)

19 MR. ACAMPORA: Okay.

20 THE COURT: My view of the world, as you know, is
21 I have never had a problem paying lawyers. I was a lawyer
22 for a long time. And there have been cases here where I
23 haven't for -- and I've written decisions on it, for
24 reasons, not in this case, in other cases.

25 Things should be looked at in the totality of the

1 -- in the totality. Now I could break this up between up to
2 the date of confirmation because you all argue I have
3 nothing to say post-confirmation. That's your argument. I
4 have plenty to say pre. All of the fees of your firm as
5 creditors' committee counsel --

6 MR. ACAMPORA: Uh-huh.

7 THE COURT: -- are subject to this Court and it
8 all deals with what happened between the beginning and the
9 time the case was confirmed.

10 MR. ACAMPORA: Right.

11 THE COURT: I can measure what was done during
12 that period of time and then either say, well, the whole
13 settlement and everything was done after, so nothing was
14 accomplished, A, which is -- don't. Let me finish before
15 you --

16 MR. ACAMPORA: Uh-huh.

17 THE COURT: -- fall down.

18 (Laughter)

19 THE COURT: I don't know in this settlement -- let
20 me backtrack.

21 Bulls, bears and pigs, it's one of the great
22 expressions of all time.

23 MR. ACAMPORA: Yes.

24 THE COURT: You are smart enough. You're young.
25 Mr. Friedman knows. Don't be a pig. If the total for this

1 project pre and post is a reasonable number, because I don't
2 -- you say I can't tell you what to take out of the
3 "settlements," we're not going to have a problem.

4 If the total -- and you can guess what totals are
5 as well as I because we've all dealt with this stuff -- is
6 more than would make sense to people, then we're going to
7 have a problem and the only place I can get it is the pre.
8 I don't want to do that. I would prefer you guys take that
9 number, some other number here, and say here's the answer.
10 We're getting blank. We've recovered --

11 MR. ACAMPORA: Blank.

12 THE COURT: -- blank. I don't know what it,
13 because I don't know what it will be. The majority of that
14 is part of the ten percent, which goes to -- play with it
15 any way you want. And it was solely through our efforts
16 that we did this. The complaint forced us. I got that.

17 But if I find that 60 percent of the money is
18 going to fees, and not ten percent, but two percent, then
19 we're going to have an issue. So just --

20 MR. ACAMPORA: Always.

21 THE COURT: -- be smart. And it's not like you're
22 doing this for the first time.

23 MR. ACAMPORA: This is not the first rodeo.

24 THE COURT: Right.

25 MR. ACAMPORA: What I would like to do, Your

1 Honor, is to take the next couple of days, get the measure
2 and when we have our meeting on Tuesday, we would like to
3 try to close this --

4 THE COURT: If you don't want to --

5 MR. ACAMPORA: -- and get as much --

6 THE COURT: -- talk about this --

7 MR. ACAMPORA: -- as much money as we can --

8 THE COURT: If you don't want to discuss it in
9 front of Mr. Kleinberg or anybody else, that's okay, too.

10 MR. ACAMPORA: Fine.

11 THE COURT: The fee portion of this.

12 MR. ACAMPORA: Fine. We really want to get this
13 --

14 THE COURT: Because I don't want them to say,
15 well, we were going to attribute this to fees and now that
16 you're not collecting it, we're going to cut down the
17 settlement. That ain't going to happen.

18 MR. ACAMPORA: That's fine.

19 THE COURT: And I don't want the secured creditor
20 coming in and saying, well, since it would be our money, why
21 -- we don't want you to do --

22 MR. ACAMPORA: They get it.

23 THE COURT: My recommendation to the secured
24 creditors, don't come back here. You've -- just don't come
25 back here.

1 MR. ACAMPORA: I don't think they will be.

2 THE COURT: Not on this case. Just don't show up
3 again. I like you guys, but don't show up again.

4 And as far as you all go, just come up with a
5 number that represents a reasonable effort because that's my
6 goal. I pay reasonable amounts of fees. That's what we're
7 charged to do.

8 MR. ACAMPORA: Uh-huh.

9 THE COURT: And don't conflate post and pre. It's
10 one big pot to me.

11 MR. ACAMPORA: Very well. We will check with
12 chambers -- we'll check with Mr. Kleinberg, check with
13 chambers and set something up for Tuesday.

14 THE COURT: Okay.

15 MR. ACAMPORA: Thank you, Your Honor.

16 THE COURT: Sorry we got upset before -- I got
17 upset. It was my fault because I didn't realize you guys
18 were waiting for me to get back to you. I take the blame on
19 that one.

20 Thank you, guys.

21 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

22 (Whereupon, these proceedings concluded at 2:48 p.m.)
23
24
25

I N D E X

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C E R T I F I C A T I O N

I, Sherri L. Breach, certify that the foregoing
transcript is a true and accurate record of the proceedings.

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Landanski Hyde

Digitally signed by Sonya
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